

Email dated 12/20/2006 from Andy Sobol, Director of Sales and Use Tax Division, Dept. of Revenue

Professor Russo:

1. I just returned from a SST Governing Board meeting last week so I can provide you what insight that I can on the issues that we have been dealing with on sourcing. I am not aware of an immediate controversy over the destination/origin issue. The issue that has arisen over the last few months is the sourcing of computer software and computer related services. Section 312 of the SSUTA provided for the concept of "concurrently available for use" which allowed a purchaser to acquire services, digital products, and prewritten software (only electronically delivered prior to 1/1/08) that would be concurrently available for use in multiple taxing jurisdictions without payment of sales or use tax to a seller and for the purchase to remit use tax to the states in which the concurrent use occurred. It is my understanding that the multiple points of use concept was advocated by the business community when the SSUTA was developed.

When it came time to actually administer the multiple points of use concept, many in the business community determined that this concept created concerns as the concept of concurrently available for use was not a well-defined item. The states and the business community spent a number of months attempting to craft an amendment to Section 312 of the SSUTA to clarify the concept and there were divisions in the business community as to the desired outcome. As an alternative, a proposal was made to repeal Section 312 and to develop an Interpretive Rule for sourcing transactions involving prewritten software and computer related services that followed the sourcing provisions in the SSUTA. This alternative was adopted by the Governing Board last week and, as far as I know, for at least the members of industry involved with the Streamlined process, the issue has been resolved.

For North Carolina purposes, the multiple points of use concept would not have been a concern for us until 1/1/08 as North Carolina does not impose tax on any services where concurrent use could occur, nor are digital products or electronic downloads of software subject to tax. If the provisions allowing for multiple points of use for software delivered by any means effective 1/1/08 had remained, legislation would have been required to authorize this exclusion. However, with the repeal of Section 312, no action will be required.

The Governing Board and its work groups will continue to address the sourcing of other services and I anticipate there will be additional rules developed in the future.

2. It is my understanding that Illinois imposes sales tax on prescription drugs. I do not know Illinois law and they could structure the imposition of tax as they chose. Under our law, without any specific provisions to the contrary, sales tax is imposed on the charge made by the seller and the fact that payment or a portion of the payment was reimbursed by a third party insurance company would not affect the liability of the seller. The seller would have the right to add the amount of tax to the charge for the property and collect it from the purchaser. I assume that if a state did impose tax on an item reimbursed by an insurance company, the payment of tax would be an item covered in the insurance contract.

Let me know if I can be of further assistance.

